

MARY ANN McNETT MASON (SBN 115089)
County Counsel
D. CAMERON BAKER (SBN 154432)
JASON W. MAUCK (SBN 255133)
Deputy County Counsel
COUNTY OF CONTRA COSTA
1025 Escobar Street, Third Floor
Martinez, California 94553
Telephone: (925) 655-2280
Facsimile: (925) 655-2266
Electronic Mail: cameron.baker@cc.cccounty.us

Attorneys for Defendant ANDREW HALL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEANNIE ATIENZA, individually and as
successor-in-interest to Decedent
LAUDEMER ARBOLEDA;

Plaintiff,

v.

ANDREW HALL, individually;
PHILLIP ARBOLEDA, individually, as
successor-in-interest to Decedent
LAUDEMER ARBOLEDA, and DOES
1-50 inclusive,

Defendants.

No. C19-03440 RS

NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT

Date: July 15, 2021
Time: 1:30 p.m.
Crtrm: 3, 17th Floor
Judge: Hon. Richard Seeborg, Presiding
Date Action Filed: June 17, 2019
Trial Date: December 6, 2021

TABLE OF CONTENTS

1		
2	NOTICE OF MOTION AND MOTION.....	1
3	MEMORANDUM OF POINTS AND AUTHORITIES.....	2
4	I. INTRODUCTION.....	2
5	II. ISSUES PRESENTED.....	4
6	III. FACTUAL BACKGROUND.....	4
7	IV. LEGAL STANDARD.....	9
8	V. LEGAL ARGUMENT.....	10
9	A. The Court Should Grant Summary Judgment as to the Fourth Amendment Claim. . .	10
10	1. Hall’s Shooting of Arboleda was Justified Under the Fourth Amendment. . .	10
11	a. Arboleda Posed an Immediate Threat to Hall and Others.	11
12	i. Arboleda Posed an Immediate Threat to Hall.	11
13	ii. Arboleda Posed an Immediate Threat to Others.	12
14	b. Time to Consider Alternatives.....	15
15	c. Arboleda Posed a Risk of Severe Crimes.	15
16	d. Arboleda Was Actively Resisting Arrest and Attempting to Evade	
17	Capture.....	15
18	e. Other Factors.	15
19	2. Qualified Immunity Applies to This Fourth Amendment Claim.....	16
20	B. The Court Should Grant Summary Judgment on Atienza’s Fourteenth Amendment	
21	Claim.	18
22	1. There was No Violation of the Fourteenth Amendment.	18
23	2. Qualified Immunity Precludes Atienza’s Fourteenth Amendment	
24	Claim.	19
25	C. The Court Should Dismiss the State Claims For Lack of Subject Matter Jurisdiction	
26	or, in the Alternative, Grant Summary Judgment on These Claims.	19
27	1. State Law Immunities Apply.	19
28	2. Hall’s Conduct was not Negligent and did not Cause Arboleda’s	
	Death.	20
	a. Hall’s Conduct Was Not Negligent.	20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

b. Even if Hall Was Negligent, His Conduct Did Not Proximately Cause Arboleda’s Death. 23

3. There Was No Violation of the Bane Act. 24

4. There Was No Assault. 25

F. The Court Should Grant Summary Judgment as to Two Damage Claims. 25

VI. CONCLUSION. 25

TABLE OF AUTHORITIES

Cases

<i>Abuka v. City of El Cajon</i> , 804 Fed. Appx. 693 (9th Cir. 2020).	18
<i>Acosta v. City & Cnty. of S.F.</i> , 83 F.3d 1143 (9th Cir. 1996).	17
<i>Arian v. City of Los Angeles</i> , 622 Fed. Appx. 692 (9th Cir. 2015).	19
<i>Bhan v. NME Hospitals, Inc.</i> , 929 F.2d 1404 (9th Cir. 1991).	9
<i>Billington v. Smith</i> , 292 F.3d 1177 (9th Cir. 2002).	16
<i>Bodine v. Warwick</i> , 72 F.3d 393 (3d Cir. 1995).	24
<i>Bordegaray v. Cnty. of Santa Barbara</i> , 2016 U.S. Dist. LEXIS 173754 (C.D. Cal. December 13, 2016).	14
<i>Brosseau v. Haugen</i> , 543 U.S. 194 (2004).	13, 14, 16, 18
<i>Brown v. Ransweiler</i> , 171 Cal. App. 4th 516 (2009).	21
<i>Bryan v. MacPherson</i> , 630 F.3d 805 (9 th Cir. 2010).	11
<i>Bryant v. Glastetter</i> , 32 Cal. App. 4th 770 (1995).	23
<i>Cameron v. Craig</i> , 713 F.3d 1012 (9th Cir. 2013).	24
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).	9
<i>City & Cnty. of S.F. v. Sheehan</i> , 135 S. Ct. 1765 (2015).	16
<i>Dang v. Cross</i> , 422 F.3d 800 (9th Cir. 2005).	25
<i>Edson v. City of Anaheim</i> , 63 Cal. App. 4th 1269 (1998).	20
<i>Elliot v. Leavitt</i> , 99 F.3d 640 (4th Cir. 1996).	11
<i>Estate of Lopez v. Torres</i> , 105 F. Supp. 3d 1148 (S.D. Cal. 2015).	23
<i>Estate of Serrano v. Trieu</i> , 713 Fed. Appx. 631 (9th Cir. 2018).	16
<i>Estate of Toribio v. City of Santa Rosa</i> , 381 F. Supp. 3d 1179 (N.D. Cal. 2019).	20, 24
<i>Garcia v. Santa Clara Cty.</i> , 2004 U.S. Dist. LEXIS 20391 (N.D. Cal. September 29, 2004).	19
<i>Gonzales v. City of Antioch</i> , 2015 U.S. Dist. LEXIS 142642 (N.D. Cal. October 20, 2015), <i>aff'd</i> 697 Fed. Appx. 900 (9th Cir. 2017).	16
<i>Gonzalez v. City of Anaheim</i> , 747 F.3d 789 (9th Cir. 2014).	11, 12, 18
<i>Graham v. Connor</i> , 490 U.S. 386 (1989).	10, 14, 15
<i>Grudt v. City of Los Angeles</i> , 2 Cal. 3d 575 (1970).	22

1	<i>Han v. City of Folsom</i> , 551 Fed. Appx. 923 (9th Cir. 2014).....	16
2	<i>Haugen v. Brosseau</i> , 351 F.3d 372 (9th Cir. 2003).....	14
3	<i>Hayes v. Cty. of San Diego</i> , 57 Cal. 4th 622 (2013).	20, 21
4	<i>Hayes v. Cty. of San Diego</i> , 736 F.3d 1223 (9th Cir. 2013).	20
5	<i>Hernandez v. City of Huntington Beach</i> , 798 Fed. Appx. 85 (9th Cir. 2019).....	18
6	<i>Hernandez v. City of Pomona</i> , 46 Cal. 4th 501 (2009).	20
7	<i>Hernandez v. Town of Gilbert</i> , 989 F.3d 739 (9th Cir. 2021).....	9
8	<i>Hundley v. District of Columbia</i> , 494 F.3d 1097 (D.C. Cir. 2007).	23, 24
9	<i>J.A.L. v. Santos</i> , 2016 U.S. Dist. LEXIS 31913 (N.D. Cal. March 10, 2016).....	16, 20
10	<i>J.A.L. v. Santos</i> , 724 Fed. Appx. 531 (9th Cir. 2018).	16, 22
11	<i>Johnson v. City of Phila.</i> , 837 F.3d 343 (3d Cir. 2016).....	24
12	<i>Juricich v. Cty. of San Mateo</i> , 2021 U.S. Dist. LEXIS 18764 (N.D. Cal. January 29, 2021).	20, 25
13	<i>Kane v. Lewis</i> , 604 Fed. Appx. 229 (4th Cir. 2015).	24
14	<i>Koussaya v. City of Stockton</i> , 54 Cal. App. 5th 909 (2020).	20
15	<i>Latits v. Phillips</i> , 878 F.3d 541 (6th Cir. 2017).....	13, 17
16	<i>Lopez v. City of L.A.</i> , 196 Cal. App. 4th 675 (2011).	21
17	<i>Losee v. City of Chico</i> , 738 Fed. Appx. 398 (9th Cir. 2018).....	17
18	<i>Martinez v. Cnty. of L.A.</i> , 47 Cal. App. 4th 334 (1996).....	19
19	<i>Mattos v. Agarano</i> , 661 F.3d 433 (9th Cir. 2011).	11
20	<i>Mendez v. Cty. of L.A.</i> , 897 F.3d 1067 (9th Cir. 2018).	23, 24
21	<i>Monzon v. City of Murrieta</i> , 978 F.3d 1150 (9th Cir. 2020).	10-12, 15
22	<i>Mullenix v. Luna</i> , 577 U.S. 7 (2015).	16, 17
23	<i>Orn v. City of Tacoma</i> , 949 F.3d 1167 (9th Cir. 2020).	13, 17
24	<i>Plumhoff v. Rickard</i> , 572 U.S. 765 (2014).....	13, 16
25	<i>Reese v. Cty. of Sacramento</i> , 888 F.3d 1030 (9th Cir. 2018).....	24
26	<i>Reynolds v. Cty. of San Diego</i> , 84 F.3d 1162 (9th Cir. 1996).	19
27	<i>S.B. v. Cnty. of San Diego</i> , 864 F.3d 1010 (9th Cir. 2017).	16
28	<i>Sabbe v. Wash. Cty. Bd. of Commissioners</i> , 2021 U.S. Dist. LEXIS 87901 (D. Ore. May 7, 2021)...	23

1	<i>Saucier v. Katz</i> , 533 U.S. 194 (2001).	18
2	<i>Scott v. Harris</i> , 550 U.S. 372 (2007).	9, 13
3	<i>Smith v. Freland</i> , 954 F.2d 343 (6th Cir. 1992).	14
4	<i>T.W. Elec. Serv., Inc. V. Pacific Elec. Contractors Ass’n</i> , 809 F.2d 626 (9th Cir. 1987).	9
5	<i>Tennessee v. Garner</i> , 471 U.S. 1 (1985).	11, 13
6	<i>Van Ort v. Estate of Stanewich</i> , 92 F.3d 831 (9th Cir. 1996).	23
7	<i>Villanueva v. California</i> , 986 F.3d 1158 (9th 2021).	12, 17
8	<i>Villiarimo v. Aloha Island Air, Inc.</i> , 281 F.3d 1054 (9th Cir. 2002).	9
9	<i>Whren v. United States</i> , 517 U.S. 806 (1996).	14
10	<i>Wilkinson v. Torres</i> , 610 F.3d 546 (9th Cir. 2010).	11-13, 15
11	<i>Zion v. Cty. of Orange</i> , 874 F.3d 1072 (9th Cir. 2017).	18

12

13 **Statutes and Rules**

14	42 United States Code Section 1983.	1, 4, 19
15	California Penal Code Section 196.	1, 4, 19, 25
16	California Penal Code Section 835a.	1, 4, 20, 25
17	Federal Rule of Civil Procedure 56(a).	9, 10
18	Federal Rule of Civil Procedure 56(g).	10

19

20 **Other Authorities**

21	Ninth Circuit Model Jury Instruction 5.5 (2008).	25
----	--	----

22

23

24

25

26

27

28

TABLE OF EXHIBITS TO BAKER DECLARATION

EXHIBIT NO.	DESCRIPTION
A	Report prepared by Jason Alexander, an expert on behalf of defendant Andrew Hall
B	Excerpts from the Deposition of Nicholas Muller
C	Transcript from Coroner's Inquest re: Death of Laudemer Arboleda
D	Excerpts from the Deposition of Andrew Hall
E	Still image with time stamp of 3.003 seconds
F	Excerpts from the Deposition of Chris Martin
G	Still image with time stamp of 3.971 seconds
H	Back to Civic Photo
I	First Shot Photo
J	Forensic Services Report
K	Still image of Honda Civic
L	Forensic Pathologist's Report prepared by Dr. Arnold Josselson
M	Excerpts from the Deposition of Dr. Arnold Josselson in this matter
N	Transcript of the Interview of Andrew Hall
O	Amended Responses to Special Interrogatories, Set One, to Plaintiff Jeannie Atienza
P	Report prepared by Robert Fonzi, an expert on behalf of defendant Andrew Hall
Q	Excerpts from the Deposition of Roger Clark
R	Excerpts from the POST Learning Domain 22
S	Excerpts from the POST Learning Domain 21

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 15, 2021, at 1:30 p.m., or as soon thereafter as the matter may be heard in the above-entitled court, located at 450 Golden Gate Avenue, San Francisco, California, Defendant Andrew Hall will and hereby does move this Court for summary judgment as to all claims asserted in Plaintiff Jeannie Atienza's Fourth Amended Complaint ("4AC"), ECF No. 40, on the grounds that the undisputed evidence shows as follows:

1. Hall did not violate Laudemer Arboleda's Fourth Amendment rights or Atienza's Fourteenth Amendment rights and should be given qualified immunity as to both Section 1983 claims.

2. The Court lacks subject matter jurisdiction over the three California state law claims.

3. There is no liability under state law due to California Penal Code sections 196 and 835a.

4. Hall is not liable as to the wrongful death negligence claim because his conduct was not negligent and did not proximately cause Arboleda's death.

5. Hall did not violate the Bane Act as he did not commit any constitutional violations or act with the requisite intent required by that act.

6. Hall did not assault Arboleda.

7. Atienza lacks evidence to support her wrongful death damage claim because Hall did not engage in any wrongful conduct that caused Arboleda's death.

8. Atienza lacks evidence to support the punitive damage claim against Hall.

In the alternative, Hall seeks partial summary judgment on the preceding issues.

This motion is supported by this notice, the memorandum of points and authorities, the Declarations of Andrew Hall, Jason Ingrassia, Christian Martin and D. Cameron Baker and exhibits thereto, the papers and records on file in this action, and such materials as may be submitted at or before the hearing.

//

//

//

//

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On November 3, 2018, Laudemer Arboleda was shot by Contra Costa County Sheriff's Deputy Andrew Hall in Danville, California. As reflected in video footage¹ of this chaotic and fluid incident, Arboleda drove his Civic directly at Hall, posing an immediate risk of serious harm to Hall and others. As Hall's shooting was justified, he bears no liability in this action.

The seven seconds in question start with Hall and Arboleda parking their respective vehicles front to front in a northbound lane of Front Street, Danville. Hall got out and started going around the back of his vehicle with the intention of taking cover behind his passenger side front door. As Hall got out of his vehicle, Arboleda started to drive forward, going to his left and entering into the southbound lane of Front Street. At this time, Hall was not aware that Arboleda has resumed driving.

As Hall and Arboleda took these actions, Sergeant Chris Martin's marked SUV made a wide left turn from Diablo Road, ending up in the southbound lane of Front Street. Martin thought Arboleda had remained stopped, but discovered Arboleda moving forward into the southbound lane. To avoid a collision with Arboleda, Martin stopped short in the southbound lane to the right of, and slightly behind, Hall's patrol car.

At that point, Arboleda could have stopped or continued forward to pass Martin's SUV on its passenger side. Instead, Arboleda made a hard right turn towards the newly-formed space between Martin's and Hall's vehicles, nearly hitting Martin's SUV. As Arboleda did so, Hall came around the back of his patrol vehicle to discover the Civic turning directly towards him. The top photo on the next page shows what Hall saw roughly four seconds² after he stopped: the top of Martin's SUV is visible over Hall's right arm and, on the far right, the Civic is just starting its hard right turn.

Arboleda accelerated and continued forward with the Civic's front wheels now pointed at Hall. The photo at the bottom of the next page shows what Hall saw at the 4.7 second mark, which is

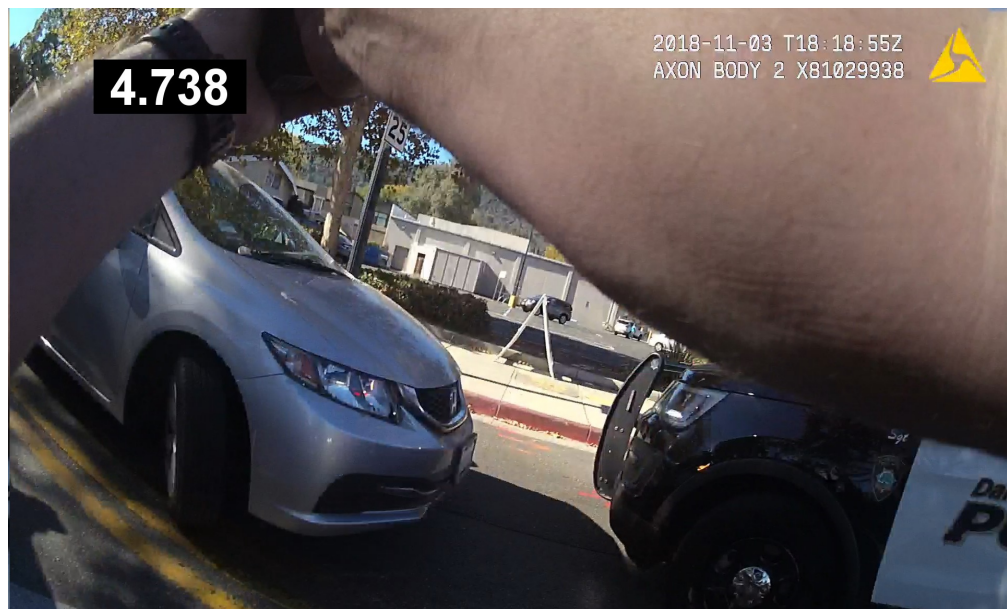
¹ Relevant footage from Hall's Body Worn Camera ("BWC") and the forward dash cam from a patrol vehicle are submitted respectively as Exhibits A and B to the Declaration of Jason Ingrassia.

² The photo has a time stamp ("4.071") in the upper left corner indicating the time in seconds from the time that Hall started to exit his vehicle. See Expert Report of Alexander Jason ("Jason Report") at 5, attached as Exhibit A to the Declaration of D. Cameron Baker ("Baker Decl.").

1 approximately when Hall would have made the decision to fire his first shot.



13 Over the next two seconds, Arboleda continued forward, nearly hitting Hall, while Hall
14 continued to backpedal and to fire his weapon. Hall fired ten shots in total, one of which was fatal and



26 whose path of travel was from Arboleda's front to his back. Seven of Hall's shots hit the Civic's front
27 windshield. Of the remaining three shots, one went through the front passenger door window and the
28 other two did not enter the interior of the Civic.

Under the circumstances of this incident, including the amount of time Hall had to react to discovering Arboleda's Civic was accelerating towards him with its front wheels pointed at him, Hall's conduct was justified under federal and California law based on the threat Arboleda posed to Hall and others. Hall, thus, should be granted summary judgment on the claims asserted against him.

II. ISSUES PRESENTED

1. Should the Court grant summary judgment on the Fourth Amendment claim where Hall did not use excessive force against Arboleda and Hall asserts qualified immunity as to this claim?

2. Is summary judgment appropriate on the Fourteenth Amendment claim where Hall did not violate Atienza's Fourteenth Amendment rights and asserts qualified immunity?

3. In the event the Court grants summary judgment on the two section 1983 claims, should the Court dismiss the pendent state claims for lack of subject matter jurisdiction?

4. Should the Court grant summary judgment on the wrongful death negligence claim, where Hall asserts immunity under California Penal Code section 196 and section 835a, did not breach any duty owed to Arboleda, and did not proximately cause Arboleda's death via any alleged breach?

5. Should the Court grant summary judgment on the Bane Act claim where Hall asserts immunity under California Penal Code section 196 and section 835a, committed no constitutional violations, and did not act with the requisite intent?

6. Should the Court grant summary judgment on the California assault claim where Hall asserts immunity under California Penal Code section 196 and section 835a, did not commit assault against Arboleda and did not act with the requisite intent?

7. Should the Court grant summary judgment on Atienza's claim for wrongful death damages where Hall's alleged wrongful conduct did not cause Arboleda's death?

8. Should the Court grant summary judgment on the claim for punitive damages against Hall because Atienza lacks evidence establishing a basis for punitive damages?

III. FACTUAL BACKGROUND

At approximately 11:00 a.m. on Saturday, November 3, 2018, a Danville resident reported a suspicious male "person of color" approaching homes. 4AC, ¶1. At that time, the following officers were out in marked patrol cars: 1) Deputy Nicolas Muller and a trainee, Officer Sonasi Maka;

2) Deputy Charles Caruso with a “ride-along,” Madison Slaughter; and 3) Hall. Deposition of Nicholas Muller, Exhibit B to the Baker Decl., at 14:3-13, 16:24-17:5, 20:7-11, 26:22-27:2; Transcript from July 30, 2019 Coroner’s Inquest, Exhibit C to the Baker Decl., at 53:8-11. The call was assigned to Muller, who was, thus, the “primary” officer. Deposition of Andrew Hall, Exhibit D to the Baker Decl., at 57:11-58:3. Caruso “attached” himself to the call as a cover officer assisting Muller. Ex. B³ at 23:20-24:3; Ex. D at 58:4-18. Hall heard Dispatch assign the call to Muller. Ex. D at 38:22-39:22.

Muller, with Maka driving, proceeded to the reported location and observed Arboleda getting into a silver Civic. Ex. B at 21:5-8, 21:22-22:4. They attempted a consensual stop, but Arboleda drove away. *Id.* at 22:19-23:19. Caruso arrived around this time. *Id.* at 23:20-23. Maka attempted a second unsuccessful consensual stop on Princeton. *Id.* at 31:4-13, 33:15-23. Muller observed Arboleda speeding and initiated a traffic stop. Ex. C at 34:19-35:7. Arboleda initially pulled over, but when Muller and Maka got out of their vehicle, he again drove off, this time running a nearby stop sign. *Id.* at 34:19-35:19. Caruso, who was just parking his vehicle behind Muller’s vehicle, immediately followed, becoming the lead pursuit vehicle. *Id.* at 35:21-25. As Arboleda drove, he threw something out the window. *Id.* at 50:17-19.

Arboleda drove onto Hartz Way, made a right turn onto a dead end street and stopped. *Id.* at 36:4-8. After parking nearby, Caruso, Muller and Maka got out, drew their weapons and gave verbal commands to Arboleda to stop and exit his vehicle. *Id.* at 36:9-16. Despite being at gunpoint and the officers’ verbal commands, Arboleda again drove off. *Id.* at 36:17-23. He eventually ended up proceeding northbound on Front Street. Ex. B at 54:7-13.

Hall heard about the traffic enforcement stop and the Civic “fleeing,” and attached himself to the call as a cover officer. Ex. D at 43:19-24, 45:10-20, 46:14-21, 47:23-48:2. He learned the subject had thrown something out of his car, which might be drugs. *Id.* at 48:14-22, 49:13-50:8. He heard Muller report having “the car at gunpoint and he just drove around us” and became concerned - “[s]omeone with that kind of disregard while driving poses a significant threat to pedestrians and other vehicles on the road as well as the officers involved.” *Id.* at 53:18-54:1, 54:12-15.

Hall estimated where the fleeing Civic might be headed and eventually ended up on Diablo

³ To minimize confusion, all exhibits to the Baker Decl. will be referenced solely as “Ex. [].”

1 Road driving westbound towards Front Street. Ex. D at 60:2-17. While on Diablo Road, Hall passed
 2 Sergeant Chris Martin in his SUV. *Id.* at 65:24-66:3. After Hall passed, Martin turned left onto
 3 Diablo Road and followed Hall. Declaration of Christian Martin (“Martin Decl.”), ¶2.

4 As Hall approached the intersection of Front Street and Diablo Road, he saw Arboleda, Muller
 5 and Caruso on Front Street driving towards that same intersection. Ex. D at 66:4-13; *see also* Martin
 6 Decl., ¶2. Hall made a left turn onto Front Street and, shortly thereafter, parked in the northbound
 7 “number one” lane -- the same lane of travel as the Civic and the two patrol vehicles.⁴ Ex. D at 68:19-
 8 69:12. Hall parked so as to leave Arboleda at least one path of travel if he continue to flee. *Id.* at
 9 70:17-21, 72:9-14. The Civic also stopped at approximately the same time. The two vehicles were
 10 roughly front to front separated by a short distance. Declaration of Andrew Hall (“Hall Decl.”), ¶3.

11 Hall “paused in the car to see if the vehicle would immediately try to flee and it remained
 12 stopped in front of [him].” *Id.*; Ex. D at 75:3-5. Hall thought Arboleda “was going to stay there. So
 13 the next step is to conduct a high-risk stop to safely take him into custody, the driver of the Honda,
 14 that is.” Ex. D at 76:1-4. To be in a better tactical position, Hall got out of his patrol vehicle and then
 15 started around the back of that vehicle towards his front passenger door, intending to use it as cover.
 16 Hall Decl., ¶5; Ex. D at 76:5-7, 79:25-80:5, 84:12-15; *see also* Ex. C at 37:22-24 (Muller testimony).
 17 As Hall explained, “hopefully [my] police presence would deter [the driver] from continuing to flee,
 18 but [] in the event that he does stay put, doesn’t attempt to flee, if I need to make high-risk stop or
 19 arrest, I want to be on the same side of his car as he is since I was face to face with him. . . . Going to
 20 my passenger side puts me in the same position as him, so if I had to go up and open the door, I can do
 21 that.” *Id.* at 78:24-79:8. As Hall had no information at that time that would warrant using deadly
 22 force against Arboleda, Hall had no intention of doing so. Hall Decl., ¶6. If Arboleda continued to
 23 flee, Hall’s back-up plan was “to get back into the car and continue the pursuit.” Ex. D at 80:17-21.

24 As Hall went towards the back of his vehicle, Martin’s SUV arrived, making a wide left turn
 25 into the southbound lane of Front Street. Martin Decl., ¶3; *see also* Hall BWC 3-003 jpeg, Exhibit E

26
 27 ⁴ The Jason Report includes figures depicting Hall, the Civic, and Martin’s SUV at various
 28 points during the incident. *See* Ex. A, Figures 1-8 at 3-4. As shown in those figures, Front Street has
 three lanes of travel: 1) a southbound lane; 2) a northbound lane for going straight or turning left, aka
 the northbound “number one” lane; and 3) a lane for turning right, aka the northbound “number 2” lane
 or “pocket” lane. Ex. A, Figures 1-8, at 3-4; *see also* Ex. D at 69:9-70:7.

1 to the Baker Decl. Believing that Arboleda had remained parked, Martin was going to drive past
 2 Hall's vehicle and park the SUV "nosed" in towards the Civic, i.e. angling the SUV to his left. Martin
 3 Decl., ¶3; Deposition of Chris Martin at 71:2-5, Exhibit F to the Baker Decl. He discovered that
 4 Arboleda was not parked, but was moving forward into the southbound lane. Martin Decl., ¶4. To
 5 avoid a possible collision, Martin stopped quickly slightly north of Hall's vehicle and blocking part of
 6 the southbound lane of Front Street. *Id.*; Ex. D at 80:23-81:1; Hall BWC 3-971 Photo, Exhibit G to
 7 the Baker Decl.; *see* Ex. A, Figure 3 at 3. Martin did not think the gap between his SUV and Hall's
 8 vehicle was "wide enough for another car to drive between." Ex. F at 71:6-11. Martin anticipated that
 9 if Arboleda resumed fleeing, he could go on the driver's side of Hall's vehicle or on the passenger's
 10 side of Martin's SUV. *Id.* at 71:14-18. If Arboleda did resume fleeing, Martin's back-up plan, like
 11 Hall's back-up plan, was to continue the pursuit. *Id.* at 72:23-73:5.

12 After Martin parked his vehicle, Arboleda had three options: 1) simply stop; 2) make a hard
 13 right and drive into the space between Martin's vehicle and Hall's vehicle; or 3) continue forward and
 14 pass Martin's vehicle on the passenger side. *See* Ex. A, Figures 15-16, 26, at 10, 15. The right hand
 15 turn was so tight that Arboleda almost hit Martin. Ex. F at 59:11-12; Ex. A, Figure 5 at 4 and Figure
 16 13 at 9. Arboleda made the hard right turn.

17 When Martin's SUV arrived, it caught Hall's attention, but he continued going around the rear
 18 of his vehicle. Hall Decl., ¶7. Hall rounded the passenger side rear corner of his vehicle and observed
 19 the Civic coming towards him. Ex. D at 81:2-24. At that point, the Civic was still making its hard
 20 right turn. Ex. A, Figure 16 at 10; *see also id.*, Figure 11 at 7. Up until that point, Hall thought
 21 Arboleda was still stopped in front of Hall's vehicle. Hall Decl., ¶8. "I did not know the Honda was
 22 moving at all. I believed I was moving from one position of cover to another." Ex. D at 84:9-11; *see*
 23 *also* Back to Civic Photo, Exhibit H to the Baker Decl.

24 Hall tried to stop his forward momentum, but could not. Hall Decl., ¶9. He raised his firearm
 25 into the shooting position and pointed it at Arboleda. *Id.*; *see also* top photo, *supra*, at 3. Hall did not
 26 fire immediately, hoping that Arboleda would stop. Hall Decl., ¶9. However, the Civic continued to
 27 make the hard right turn as it approached Hall. Ex. A, Figure 12 at 7. At this point, the Civic
 28 accelerated with its front wheels pointed directly at Hall. *Id.* at 8; First Shot Photo, Exhibit I to the

Baker Decl.; Ex. B at 61:5-20; Ex. C at 37:22-38:2, 39:16-19 (Muller testimony); Ex. A at 8; Ex. F at 62:15-17 (slow when “he made that right-hand turn, but I believe he accelerated at that point”).

Hall backpedaled and, fearing for his safety, commenced shooting. Hall Decl., ¶9; Ex. D at 87:21-23; Ex. C at 63:21-64:3 (Hall testimony). Just slightly more than a second elapsed from when Hall first observed the Civic driving towards him until Hall commenced firing.⁵

At the time of the first shot, the Civic was extremely close to Hall. Ex. A, Figure 13; *see also* Hall Decl., ¶9. At his post-incident interview, Hall stated that he believed the Civic was “approximately a half a car length away from” him. Ex. D at 90:8-12. As the Civic continued forward, almost striking Hall, he continued to fire. Ex. A, Figures 19-20, 31-40. He stopped with three bullets remaining. Forensic Services Report, Exhibit J to the Baker Decl., at 2.

Hall fired ten shots in all. The approximate bullet trajectories are set out in Figure 27 of the Jason Report. The first five shots all hit in the same general area of the front windshield. *See* Photograph of Civic, Exhibit K to the Baker Decl. The next two shots also hit the front windshield, but more on the passenger side. *Id.* Of the remaining three shots, the second to last shot went through the front passenger window and the other two did not enter the interior of the vehicle. Ex. A, Figure 27; Ex. J at 2. At the time of the second to last shot, the Civic had not passed Hall. *See id.*, Figure 48.

The autopsy performed by Dr. Arnold Josselson determined that there was a single fatal shot. Ex. C at 24:5-25:2 (testimony of Dr. Arnold Josselson); Forensic Pathologist’s Report, Exhibit L the Baker Decl., at 2. The path of this shot was “from the victim’s right to left, front to back, and slightly downward.” Deposition of Dr. Arnold Josselson, Exhibit M to the Baker Decl., at 13:2-4. Dr. Josselson testified that he could not determine which shot of Hall’s ten shots was the fatal one or Hall’s location when he shot the fatal shot. *Id.* at 11:1-7, 35:9-23.

Hall was interviewed that evening.⁶ In his initial statement, given before he watched any of the video footage, Hall informed the investigators that

⁵ The still photo from Hall’s BWC with the time stamp of 3.971 shows Hall starting to bring his firearm up, indicating that he has already seen Arboleda. Ex. G; Hall Decl., ¶9. Hall fired the first shot at 5.072 seconds after stopping. Ex. A, Figures 31-32. Hall would have made his decision to shoot between .25 and .35 seconds prior to shooting. *Id.* at 8. This means Hall decided to shoot .65-.75 seconds after observing the Civic coming towards him.

⁶ Hall was sequestered and then interviewed at 6:26 p.m. on November 3, 2018.

1 the car then lurched forward, proceed to drive forward towards me. Uh, at that point I
 2 was on the passenger side of my car. I had no protection, um, that I could take cover
 3 behind, like my trunk or - or use a car to barricade myself. Um, since the car was
 4 driving at me, I believed he was gonna ram me, uh, and kill me. I was fearful that he
 5 was - had no intention of stopping, and that he would kill me if I did not take any
 6 action. Uh, so fearing for my life, uh, I discharged my firearm toward the driver in the
 7 driver's seat, through the windshield. I do not recall exactly how many rounds I fired.
 I believe, uh, it was somewhere, uh, between four and five rounds. . . . he then turned
 the wheel left towards Sergeant Martin. I now feared that he was gonna try and strike
 Sergeant Martin, so fearing for his safety, I want to try and prevent him from harming
 Sergeant Martin, so I discharged - I again do not remember the exact amount, um, but I
 discharged four or five more rounds, um into the driver compartment area, the driver's
 seat area.

8 Hall Interview, Exhibit N to the Baker Decl., at 6:229-244. After Hall reviewed the video footage, he
 9 stated "I initially thought that I had fired my weapon, paused and then fired my weapon. Um, I now
 10 see that it was one continuous volley, um, as the vehicle moved, um, passed my car and Sergeant
 11 Martin's car. Once the threat had passed me I stopped firing" *Id.* at 23:996-999.

12 The current operative complaint is the Fourth Amended Complaint, ECF No. 40. That
 13 complaint asserts five causes of action: 1) a Fourth Amendment claim asserted on behalf of Arboleda;
 14 2) a Fourteenth Amendment claim asserted on behalf of Atienza; 3) a wrongful death negligence
 15 claim; 4) a Bane Act claim; and 5) a battery claim. Hall now seeks summary judgment as to all five
 16 claims or, in the alternative, summary adjudication of issues.

17 **IV. LEGAL STANDARD**

18 Summary judgment is appropriate. There are no disputed material facts, and, viewing the
 19 evidence most favorably to Atienza, Hall is entitled to prevail as a matter of law. Fed. R. Civ. P.
 20 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The evidence set forth in this motion
 21 meets Hall's initial burden of establishing no disputed material facts. *Celotex*, 477 U.S. at 325; *Bhan*
 22 *v. NME Hospitals, Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991). Notably, the Court may rely on the
 23 video evidence submitted by Hall and disregard any contradictory versions of events proffered by
 24 Atienza. *Scott v. Harris*, 550 U.S. 372, 381-82 (2007); *see also Hernandez v. Town of Gilbert*, 989
 25 F.3d 739, 746 (9th Cir. 2021). Atienza cannot overcome Hall's showing unless she produces "specific
 26 evidence, through affidavits or admissible discovery material, to show that the dispute exists." *Bhan*,
 27 929 F.2d at 1409; *T.W. Elec. Serv., Inc. V. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630-31 (9th
 28 Cir. 1987); *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002).

Partial summary judgment may be granted as to the individual claims and defenses or a “part of each claim or defense.” Fed. R. Civ. P. 56(a). The Court may also adjudicate individual facts not genuinely in dispute. Fed. R. Civ. P. 56(g).

V. LEGAL ARGUMENT

In this case, Atienza contends that Hall is liable for Arboleda’s death because Hall, with knowledge of where Arboleda was fleeing, ran into the gap between his vehicle and Martin’s vehicle in order to shoot Arboleda and only shot Arboleda as “Arboleda’s car was passing him.” 4AC, ¶2. This central contention finds no support in the video evidence and other evidence now before the Court. To the contrary, the undisputed evidence demonstrates that 1) Hall had no prior notice that Arboleda was in fact driving into that gap, 2) that prior to and at the time of Hall’s initial shots, Arboleda posed an immediate threat to Hall as the Civic was accelerating towards him with its front wheels pointed directly at him, and 3) that Hall could not have anticipated Arboleda driving into the gap between his vehicle and Martin’s SUV because the gap did not even exist when he decided to go to his passenger side front door. In light of the undisputed evidence, Arboleda’s conduct, which was unforeseeable, left Hall with no option but to fire in self-defense. Consequently, Hall bears no liability for Arboleda’s tragic death.

A. The Court Should Grant Summary Judgment as to the Fourth Amendment Claim

1. Hall’s Shooting of Arboleda was Justified Under the Fourth Amendment

Under *Graham v. Connor*, 490 U.S. 386 (1989), the Court uses an objective standard to evaluate the reasonableness of the force used by Hall under the Fourth Amendment, which “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime committed by the suspect, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Id.* at 396, 397. “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the about of force that is necessary in a particular situation.” *Id.* at 396-97. The Court “view[s] the facts as an officer would have encountered them” at the time of the incident. *Monzon v. City of Murrieta*, 978 F.3d 1150, 1157 (9th Cir. 2020); *see also Graham*, 490 U.S. at 396;

Gonzalez v. City of Anaheim, 747 F.3d 789, 794 (9th Cir. 2014). Based on these factors, Hall’s use of deadly force was reasonable under the Fourth Amendment, given the threat posed by Arboleda and the extremely limited time Hall had to make a decision regarding whether to shoot (roughly a second).

a. Arboleda Posed an Immediate Threat to Hall and Others.

Whether the suspect poses an immediate threat is the most important factor. *Mattos v. Agarano*, 661 F.3d 433, 441 (9th Cir. 2011) (*en banc*); see *Bryan v. MacPherson*, 630 F.3d 805, 826 (9th Cir. 2010). “When ‘the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer and or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.’” *Monzon*, 978 F.3d at 1157 (quoting *Tennessee v. Garner*, 471 U.S. 1, 111 (1985)). In this case, the video evidence demonstrates that Arboleda posed an immediate deadly threat to Hall and to pedestrians and other drivers.

i. Arboleda Posed an Immediate Threat to Hall

The video evidence establishes that, as Hall came around the back of his vehicle, he discovered Arboleda driving his Civic towards Hall with its front wheels pointed directly at Hall. See Top Photo, *supra* at 3. That evidence also establishes that Arboleda was accelerating towards Hall at the time⁷ and had an average speed of 14 mph, meaning that it was traveling 21 feet per second.⁸ Ex. A at 8. Finally, it establishes that although Hall had his firearm pointed at Arboleda, Arboleda continued to drive towards Hall with the Civic’s wheels still pointing at Hall up to and past Hall’s first shot. *Id.*, Figures 11-12, 31-32 at 7, 20; Ex. I (still of first shot). Hall did not have to await being hit. “[T]he Fourth Amendment does not require omniscience,” and the absolute certainty of harm need not precede an act of self-protection.” *Wilkinson*, 610 F.3d at 553 (quoting *Elliot v. Leavitt*, 99 F.3d 640, 644 (4th Cir. 1996)); see also *Monzon*, at 1158 (officers entitled to use deadly force when they have “probable cause” to believe suspect poses a threat of serious physical harm to themselves or others).

The threat posed by Arboleda to Hall is equally evident in the later stills showing the Civic at the time of the second through six shots. Ex. A, Figures 33-36. Indeed, right before Hall’s second

⁷ This acceleration is corroborated by statements of witnesses, including Hall, Muller and Martin. Hall Decl., ¶8; Ex. B at 61:5-20; Ex. F at 62:10-17; Ex. C at 39:16-19.

⁸ This is the Civic’s average speed as it passed Martin’s SUV. Ex. A at 8.

1 shot, even though he was backpedaling, he was nearly hit by Arboleda as the Civic was mere inches
 2 from him. *See id.*, Figure 19 at 12. At the time of the fifth and sixth shots, while the front of the Civic
 3 is past Hall, Hall is still inches from the Civic and Arboleda could easily have swerved to the right and
 4 hit Hall. *Id.*, Figures 21, 37-42 at 12, 21. Notably, because of the lag time between perception and
 5 physical reaction, Hall fired at least one shot, if not two shots, after he believed himself to be out of
 6 danger and decided to stop shooting. *Id.* at 23.

7 The Ninth Circuit has found an immediate threat to officer safety in analogous situations. In
 8 *Monzon*, the Ninth Circuit found that “Monzon posed an immediate threat to the safety of the officers
 9 when he ignored commands to stop the van and drove near, toward, and amongst the officers on foot.”
 10 978 F.3d at 1157. In that case, Monzon was accelerating, had reached a top speed of 17.4 mph, and,
 11 although the vehicle was “no longer moving,” the engine was “revving.” 978 F.3d at 1158, 1159 n.8.
 12 Likewise, in *Wilkinson v. Torres*, 610 F.3d 546 (9th Cir. 2010), the Ninth Circuit held that “a
 13 reasonable officer had probable cause to believe that the threat to safety justified the use of deadly
 14 force” where “the driver of a moving vehicle, ignoring police commands, attempted to accelerate
 15 within close quarters of two officers on foot.” 610 F.3d at 55. In *Wilkinson*, at the time of the
 16 shooting, the vehicle was traveling at a “slow rate of speed” but could have accelerated if it gained
 17 traction. 610 F.3d at 552; *cf. Villanueva v. California*, 986 F.3d 1158, 1164, 1170-72 (9th Cir. 2021)
 18 (no basis to use deadly force where, *inter alia*, vehicle was going 5 mph, not pointed at the officers
 19 and not accelerating, and officers were 15-20 feet away). And in a 2014 en banc decision, the Ninth
 20 Circuit distinguished the fact pattern before it in a manner affirmatively supporting Hall’s position.
 21 *Gonzalez v. City of Anaheim*, 747 F.3d 789 (9th Cir. 2014)(*en banc*). While reversing the grant of
 22 summary judgment in that case, the Ninth Circuit was careful to note that the officer “was not on foot
 23 next to a vehicle that might run him over at any moment should it have accelerated.” *Id.* at 796.

24 **ii. Arboleda Posed an Immediate Threat to Others**

25 Atienza may argue that at some point, the Civic ceased to be an immediate threat to Hall and,
 26 thus, Hall was required by the Fourth Amendment to stop shooting. Putting aside that courts generally
 27
 28

do not “parse” a single volley in this fashion,⁹ under the Fourth Amendment, Hall could continue to shoot because Arboleda’s driving his Civic towards Hall established that Arboleda posed an imminent danger to the public, specifically the pedestrians in nearby downtown Danville as well as other drivers.

“Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape using deadly force. Thus, if the suspect threatens the officer with a weapon, . . . deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.” *Garner*, 471 U.S. at 11-12. In 2007, the Supreme Court clarified that under *Garner*, deadly force can be used where the suspect’s “flight by itself (by means of a speeding automobile) [] posed the threat of ‘serious physical harm . . . to others.’” *Scott v. Harris*, 550 U.S. 372, 381 n.9 (2007) (quoting *Garner*). As the Ninth Circuit recently held, the Supreme Court’s decisions authorize the use of deadly force where “the flight itself posed a threat of serious harm to others. But to warrant the use of deadly force, a motorist’s prior interactions with police must have demonstrate that ‘he either was willing to injure an officer that got in the way of escape or was willing to persist in extremely reckless behavior that threatened the lives of all those around.’” *Orn v. City of Tacoma*, 949 F.3d 1167, 1177 (9th Cir. 2020) (quoting *Latits v. Phillips*, 878 F.3d 541, 548 (6th Cir. 2017)).

The video evidence of the incident satisfies the *Garner* standard as it affirmatively shows that Arboleda was “willing to injure” Hall who “got in the way of escape.” Consequently, a reasonable officer in Hall’s position had objective evidence warranting the use of deadly force to prevent Arboleda from continuing to flee. Not surprisingly, Hall thought Arboleda’s continuing to flee despite being at gunpoint showed a willingness to risk the safety of others. Ex. D at 54:12-15.

Hall is not conjuring up some fictional risk. The shooting took place roughly a block from the Danville downtown, which, around noon on a Saturday, would have lots of pedestrian traffic. Ex. F, at 13:25-14:15, 36:20-37:3; *see also* Ex. D at 48:4-7. Notably, Martin recognized the “[p]otential for other people to be injured” and would have ordered termination of the pursuit if Arboleda turned towards downtown. Ex. F at 37:19-38:4; *compare Brosseau v. Haugen*, 543 U.S. 194, 197 (2004).

⁹ *See Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014) (case would be different if “an initial round had clearly incapacitated Rickard” or he had “clearly given himself up.”); *Wilkinson*, 610 F.3d at 552, 553 & n.4.

1 Even if Arboleda had turned right at Diablo Road, his driving put other drivers at risk. A reasonable
2 officer in Hall's position could consider these risks in determining whether to continue to fire. *See*
3 *Smith v. Freland*, 954 F.2d 343, 347 (6th Cir. 1992) (appropriate to consider risk to other officers and
4 the public where suspect "had proven he would do almost anything to avoid capture").

5 Plaintiff may contend that Hall cannot rely on this justification because he did not state it
6 during his interview. During that interview, Hall was not asked to identify all the reasons for him to
7 shoot. More significantly, Hall's intent and subjective motive for shooting are irrelevant under
8 *Graham*. *Graham*, at 397; *see also Whren v. United States*, 517 U.S. 806, 806 (1996). Indeed, both
9 the Supreme Court and the Ninth Circuit have implicitly rejected this argument, including in *Garner*.
10 As the Ninth Circuit noted in *Haugen v. Brosseau*, 351 F.3d 372 (9th Cir. 2003), *rev'd on other*
11 *grounds*, 543 U.S. 194 (2004), in "*Garner*, [] the police officer had initially justified his use of deadly
12 force based only on the need to prevent Garner's escape but asserted later – apparently through
13 counsel – that deadly force was justified by Garner's dangerousness." *Id.*, 351 F.3d at 387. And in
14 *Haugen*, the Ninth Circuit, citing *Graham*, analyzed whether shooting to prevent a dangerous high-
15 speed chase was a valid reason for the use of deadly force, even though this reason was articulated by
16 the dissent but not the officer. *See id.* Significantly, the Supreme Court reversed the Ninth Circuit in
17 *Haugen* on that very reason, positing the issue on qualified immunity was whether the officer could
18 "shoot a disturbed felon, set on avoiding capture through vehicular flight, when persons in the
19 immediate area are at risk from that flight." 543 U.S. at 200.

20 The Central District denied a plaintiff's motion in limine to eliminate any "suggestion that a
21 rule exists permitting an officer to shoot someone if the officer believes that person is a 'fleeing
22 felon,'" which motion rested on the fact that the officer did not testify this rule was a reason for his
23 shooting. *Bordegaray v. Cnty. of Santa Barbara*, 2016 U.S. Dist. LEXIS 173754, *24-25 (C.D. Cal.
24 December 13, 2016). The Court denied the motion under *Graham*, holding that the relevant query is
25 whether the shooting was "objectively reasonable" "without regard to [the officer's] underlying intent
26 or motivation." *Id.* at *25 (quoting *Graham*).

27 Given the undisputed evidence establishing Arboleda's driving the Civic posed an immediate
28 risk of serious harm to Hall, a reasonable officer would have perceived Arboleda as not just a threat to

Hall, but to pedestrians and other drivers as well, justifying the use of deadly force.

b. Time to Consider Alternatives.

In addition to the risk of harm posed by Arboleda, the Court must make “allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” *Graham*, 490 U.S. at 397. This is particularly true here and favors Hall.

The entire incident took only seven seconds. *See* Ex. A, Figures 49-50 (final shot taken 7.174 seconds after Hall stopped); *compare Monzon*, 978 F.3d at 1159 (“chaotic situation spanning a mere 4.5 seconds”); *Wilkinson*, 610 F.3d at 551 (incident took “in less than nine seconds”). Prior to Martin’s last-second arrival, the situation was already tense and rapidly evolving. His arrival made it more so, resulting in a narrow gap between his vehicle and Hall’s vehicle that Arboleda unexpectedly decided to drive into. *See* Ex. D at 85:3-13. Hall was not aware of Arboleda turning into this gap until after Hall came around the back of his patrol vehicle and discovered the Civic directly before him and accelerating. He had to decide whether to shoot almost immediately. He shot roughly 1 second later, only five seconds after he had stopped.

c. Arboleda Posed a Risk of Severe Crimes

In *Monzon*, the Ninth Circuit found that this factor weighed in favor of the use of deadly force where Monzon led officers on a dangerous, high-speed chase at night, refused to stop the van and then, ignoring commands to stop, “drove near, toward, and amongst the officers on foot.” 978 F.3d at 1157. In this case, Arboleda disregarded Hall’s presence and firearm and “drove near [and] toward” an officer on foot (Hall). Accordingly, from Hall’s perspective and based on what he knew about Arboleda, this factor favors the use of force. *Id.*

d. Arboleda Was Actively Resisting Arrest and Attempting to Evade Capture.

In this case, the undisputed evidence establishes that Arboleda “was actively resisting arrest and attempting to evade arrest by flight.” *Graham*, 490 U.S. at 397. This factor favors Hall.

e. Other Factors

The Court in the past has considered other factors in assessing the reasonableness of the force used. None of those factors apply here to defeat summary judgment.

Hall cannot be faulted for not verbally warning Arboleda prior to using deadly force. Hall's pointing of his firearm at Arboleda was warning enough. Further, a verbal warning in the circumstances was neither practical nor reasonable. *J.A.L. v. Santos*, 724 Fed. Appx. 531, 533 (9th Cir. 2018); *see also Gonzales v. City of Antioch*, 2015 U.S. Dist. LEXIS 142642, *55 (N.D. Cal. October 20, 2015), *aff'd* 697 Fed. Appx. 900 (9th Cir. 2017).

Arboleda's impaired mental health, likewise, does not figure into the analysis. Similar to the fact pattern in *J.A.L.*, Hall only saw Arboleda's face right before the shooting and thought Arboleda "looked like he was spaced out . . . under the influence of something or, uh, mentally not understanding what was going on." Ex. N at 6:226-228. This is insufficient to establish Hall was aware of Arboleda's mental health issues. *J.A.L.*, 724 Fed. Appx. at 534. Even if Hall was aware of Arboleda's mental health issues, Arboleda still posed an immediate threat of harm to Hall and others by virtue of his driving. *J.A.L. v. Santos*, 2016 U.S. Dist. LEXIS 31913, *12-13 (N.D. Cal. March 10, 2016) (citing *City & Cty. of S.F. v. Sheehan*, 135 S. Ct. 1765, 1775 (2015)).

Nor can Atienza rely upon Hall's tactical decisions. The Ninth Circuit's "cases do not 'permit a plaintiff to establish a Fourth Amendment violation based merely on bad tactics that result in a deadly confrontation that could have been avoided.'" *Han v. City of Folsom*, 551 Fed. Appx. 923, 923 (9th Cir. 2014) (quoting *Billington v. Smith*, 292 F.3d 1177, 1190 (9th Cir. 2002)); *see also Estate of Serrano v. Trieu*, 713 Fed. Appx. 631, 632 (9th Cir. 2018).

In view of the undisputed evidence in this case, and considering all of the *Graham* factors, Hall's use of deadly force did not violate Arboleda's Fourth Amendment rights.

2. Qualified Immunity Applies to This Fourth Amendment Claim

The qualified immunity analysis must be particularized to the situation that Hall faced. *Brosseau*, 543 U.S. at 200; *Plumhoff*, 572 U.S. at 779; *Mullenix v. Luna*, 577 U.S. 7 (2015); *see also S.B. v. Cnty. of San Diego*, 864 F.3d 1010, 1015 (9th Cir. 2017). There is no prior case law squarely holding Hall could not use deadly force to protect himself in his situation. And, as discussed in greater depth below, there is no case law clearly establishing he could not use deadly force to protect others even if the Court were to conclude that Hall continued to shoot after the Civic no longer posed a threat to him. Qualified immunity is, therefore, appropriate as to the Fourth Amendment claim.

1 As the Supreme Court recognized in *Mullenix*, “excessive force cases involving car chases
2 reveal [a] hazy legal backdrop.” 577 U.S. at 14. The Supreme Court has not addressed a factually
3 similar case that “squarely governs” here. *See id.* at 15 (discussing *Scott* and *Plumhoff*).

4 Nor has the Ninth Circuit. In cases involving factually distinct situations, it has held “the use
5 of deadly force to stop a slow-moving vehicle unreasonable when the officers could have easily
6 stepped out of the vehicle’s path to avoid danger.” *Villanueva, supra*, 986 F.3d at 1170 (citing *Orn*;
7 *Acosta v. City & Cnty. of S.F.*, 83 F.3d 1143 (9th Cir. 1996)); *see also Losee v. City of Chico*, 738 Fed.
8 Appx. 398 (9th Cir. 2018). In *Villanueva*, the vehicle “was not aimed [at one of the officers] and was
9 moving very slowly and not accelerating.” *Id.* at 1171. In *Orn*, the suspect was driving “at just five
10 miles per hour” and the officer could easily “have avoided any risk of being struck” by taking “a step
11 backwards and get out of the path of Mr. Orn’s vehicle.” *Orn*, 949 F.3d at 1176 (quoting officer).
12 Likewise, in *Acosta*, the officer could “have avoided any risk of injury ‘by simply stepping to the
13 side.’” *Id.* (quoting *Acosta*, 83 F.3d at 1146-47). And in *Losee*, while affirming summary judgment as
14 to four officers based on their “reasonable fear of imminent harm,” the Ninth Circuit reversed the grant
15 of qualified immunity to a fifth officer where that officer fired his first two shots because he “could
16 have avoided the Honda as it slowly backed away” and his second two shots were shot through the
17 vehicle’s back window. 738 Fed. Appx. at 400-1.

18 This case presents a materially different situation. Hall had roughly one second to decide
19 whether to shoot with the Civic accelerating towards him with its wheels pointed at him and him
20 trapped between his patrol vehicle and Martin’s SUV. None of the Ninth Circuit’s prior decisions
21 addressed a sufficiently similar situation so as to inform a reasonable officer that deadly force could
22 not be used in the situation that Hall faced.

23 And decisions from other Circuits affirmatively provide support for qualified immunity for
24 Hall. In *Long v. Slaton*, the Eleventh Circuit held an officer was entitled to use deadly force under the
25 Fourth Amendment on an individual “attempting to flee in the deputy’s car, even though at the time of
26 the shooting the individual had not yet operated the cruiser dangerously.” *Mullenix*, 577 U.S. at 17
27 (discussing *Long*). In *Latits v. Phillips*, 878 F.3d 541 (6th Cir. 2017), the Sixth Circuit held the officer
28 entitled to qualified immunity for the use of deadly force arising from a pursuit and distinguished prior

cases holding that “shooting a driver while positioned to the side of his fleeing car violates the Fourth Amendment” because those cases involved “shooting the non-violent driver as he attempted to *initiate* flight.” 878 F.3d at 553 (italics in original; citations omitted); *id.* (prior cases “clearly established that ‘shooting a driver while positioned to the side of his fleeing car violated the Fourth Amendment, absent some indication suggesting that the driver poses more than a passing threat.’”).

In sum, Hall’s actions, even assuming they violated the Fourth Amendment, were in the “‘hazy border between excessive and acceptable force.’” *Brosseau*, 543 U.S. at 201 (quoting *Saucier v. Katz*, 533 U.S. 194, 206 (2001)). The Court should grant Hall qualified immunity on this claim.

B. The Court Should Grant Summary Judgment on Atienza’s Fourteenth Amendment Claim

1. There was No Violation of the Fourteenth Amendment

Where, as here, the officer has essentially no time to react to the situation, the Court uses a “purpose to harm” standard to determine whether there was a violation of the Fourteenth Amendment. *Abuka v. City of El Cajon*, 804 Fed. Appx. 693, 694 (9th Cir. 2020). This standard applies even if the situation arose due to the officer’s tactical mistakes. *Id.* To prevail on her claim, Atienza must establish that Hall acted with a “purpose to harm” unrelated to any legitimate law enforcement objectives. *Id.*; *see also Gonzalez*, 747 F.3d at 797. She cannot because Hall’s use of force was related to a legitimate law enforcement objective, protecting himself and others. *Abuka*, 804 Fed. Appx. at 694; *see also Hernandez v. City of Huntington Beach*, 798 Fed. Appx. 85, 87 (9th Cir. 2019).

In 2017, the Ninth Circuit addressed a somewhat similar Fourteenth Amendment claim in *Zion v. Cty. of Orange*, 874 F.3d 1072 (9th Cir. 2017). In that case, Connor Zion stabbed an officer. *Id.* at 1075. Another officer, Deputy Michael Higgins, witnessed the attack and fired a volley of nine shots while Zion was roughly fifteen feet away. *Id.* After Zion fell to the ground, Higgins ran up to within four feet of Zion and fired nine more shots, emptying his weapon. *Id.* Higgins then paused, walked around in a circle, and, while Zion was still on the ground, took a running start and stomped three times on Zion’s head. *Id.* The Ninth Circuit affirmed the grant of summary judgment on the Fourteenth Amendment claim with respect to all of the shots,¹⁰ despite there being two separate

¹⁰ The plaintiff in *Zion* did not challenge the legality of the initial nine shots, but did challenge the second volley of nine shots. 874 F.3d at 1076.

volleys and Higgins' emptying his weapon. *Id.* at 1077. "The two volleys came in rapid succession, without time for reflection. Whether excessive or not, the shootings served the legitimate purpose of stopping a dangerous suspect." *Id.*

Even *assuming arguendo* some of Hall's shots in defense of Martin were unrelated to a legitimate law enforcement purpose, which they were not, summary judgment is appropriate as to this claim because Plaintiff cannot establish those shots caused Arboleda's death. As stated above, there was only one fatal shot and there is insufficient evidence to establish that any of the later shots were in fact the shot that killed him. Ex. M at 11:1-7, 35:9-23.

2. Qualified Immunity Precludes Atienza's Fourteenth Amendment Claim

In addition to this issue, the Court should grant summary judgment on this claim due to qualified immunity. Simply put, there are no cases squarely holding that Hall would violate Atienza's Fourteenth Amendment rights by using deadly force in the factual situation before him.

C. The Court Should Dismiss the State Claims For Lack of Subject Matter Jurisdiction or, in the Alternative, Grant Summary Judgment on These Claims

If the Court determines that summary judgment is appropriate on Plaintiff's two Section 1983 claims, the Court should dismiss the three state law claims for lack of subject matter jurisdiction. *Reynolds v. Cty. of San Diego*, 84 F.3d 1162, 1171 (9th Cir. 1996). In the alternative, the Court should grant summary judgment to Hall on those claims for the reasons discussed below.

1. State Law Immunities Apply

Two California immunities preclude Atienza's state law claims.

Under Penal Code section 196, "there is no civil liability when a homicide is justified." *Garcia v. Santa Clara Cty.*, 2004 U.S. Dist. LEXIS 20391, *31 (N.D. Cal. September 29, 2004); *see also Arian v. City of Los Angeles*, 622 Fed. Appx. 692 (9th Cir. 2015), as amended by 2015 U.S. App. LEXIS 22113 (December 18, 2015). "The test for determining whether a homicide is justifiable under Penal Code § 196 is whether the circumstances created a fear of death or serious bodily harm to the officer or another." *Martinez v. Cnty. of L.A.*, 47 Cal. App. 4th 334, 349 (1996). There is undisputed evidence here meeting that standard as Arboleda's driving his Civic towards Hall created a reasonable fear of serious bodily harm to Hall. *See Arian, supra*, 2015 U.S. App. LEXIS 22113, *2; *Garcia*, 2004 U.S. Dist. LEXIS 20391, at *32. Based on the immunity of section 196, the Court should grant

summary judgment as to the wrongful death negligence claim and on the Bane Act and the assault claim to the extent that they are predicated upon Arboleda's death. *Estate of Toribio v. City of Santa Rosa*, 381 F. Supp. 3d 1179, 1191 (N.D. Cal. 2019).

Penal Code section 835a also precludes these claims. This section "provides that a peace officer with reasonable cause to make an arrest 'may use reasonable force to effect the arrest' and 'need not retreat or desist from his efforts [to make an arrest] by reason of the resistance or threatened resistance of the person being arrested.'" *Hernandez v. City of Pomona*, 46 Cal. 4th 501, 519 (2009) (quoting Penal Code § 835a); *see also Koussaya v. City of Stockton*, 54 Cal. App. 5th 909, 942 (2020). Under this section, reasonable force is evaluated under the *Graham* standard and acts to bar Atienza's state law claims. *Edson v. City of Anaheim*, 63 Cal. App. 4th 1269, 1272-73(1998).

2. Hall's Conduct was not Negligent and did not Cause Arboleda's Death

The Court should grant summary judgment on the wrongful death negligence claim¹¹ for two additional reasons. First, Hall's conduct fell within the zone of reasonable actions and, thus, was not negligent. Second, Hall's conduct, even if negligent, did not proximately cause Arboleda's death.

a. Hall's Conduct Was Not Negligent

Under California law, a negligence claim based on the use of deadly force can include pre-shooting tactical decisions as well as the use of force itself. *Hayes v. Cty. of San Diego*, 736 F.3d 1223, 1236 (9th Cir. 2013); *Hayes v. Cty. of San Diego*, 57 Cal. 4th 622, 639 (2013). In addition to evaluating the reasonableness of the use of force itself, "negligent conduct by officers that provokes the situation that requires law enforcement to use force can render otherwise reasonable force unreasonable." *Juricich v. Cty. of San Mateo*, 2021 U.S. Dist. LEXIS 18764, *38 (N.D. Cal. January 29, 2021) (citing *Hayes*, 57 Cal.4th at 629-30); *see also J.A.L., supra*, 2016 U.S. Dist. LEXIS 31913, at *19-20 (conduct that "unreasonably provoked" or "aggravated"). Because Hall's use of force was reasonable and his pre-shooting conduct did not "provoke" Arboleda into driving the Civic towards Hall, Hall's conduct was not negligent under California law.

"The standard for evaluating the unreasonable use of force [under California law] reflects

¹¹ In this claim, Atienza specifically alleges Hall's negligence caused Arboleda's death and seeks only damages caused to her as a result of his death. 4AC, ¶33.

1 deference to the split-second decisions of an officer and recognizes that, unlike private citizens,
 2 officers may use deadly force” and “are charged with acting affirmatively and using force as part of
 3 their duties.” *Lopez v. City of L.A.*, 196 Cal. App. 4th 675, 685 (2011). Thus, “[w]here potential
 4 danger, emergency conditions, or other exigent circumstances exist, [t]he Supreme Court’s definition
 5 of reasonable is . . . comparatively generous to the police” and “surround[s] the police who make these
 6 on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases.”
 7 *Brown v. Ransweiler*, 171 Cal. App. 4th 516, 528 (2009) (citations and internal quotation marks
 8 omitted); *Hayes*, 57 Cal. 4th at 632 (“a degree in discretion as to how [officers] choose to address a
 9 particular situation”). “As long as an officer’s conduct falls within the range of conduct that is
 10 reasonable under the circumstances, there is no requirement that he or she choose the ‘most
 11 reasonable’ action or the conduct that is least likely to cause harm and at the same time the most likely
 12 to result in the successful apprehension of a violent suspect, in order to avoid liability for negligence.”
 13 *Hayes*, 57 Cal. 4th at 632.

14 While Atienza faults Hall’s decision to position himself behind his passenger side front door,¹²
 15 that decision and related actions fell within the range of reasonable conduct, particularly in light of the
 16 limited time he had to evaluate the situation and his duty to act affirmatively in response to the threat
 17 posed by Arboleda’s ongoing flight. Expert Report of Robert Fonzi, Exhibit P to the Baker Decl., at
 18 30-32; *see* Ex. B at 58:12-13 (situation was “fluid so there’s not a lot of time to formulate a plan.”).

19 Hall’s decision was consistent with the training provided by California’s Commission on Peace
 20 Officer Standards and Training (“POST”). That training does not specify whether when the officer’s
 21 patrol vehicle and the suspect vehicle are parked front-to-front, Hall should remain on his driver’s side
 22 or go to his passenger’s side. Deposition of Roger Clark, Exhibit Q to the Baker Decl., at 88:24-
 23 89:18. Instead, POST directs the officer to “identify, plan and then move to a position that is
 24 advantageous.” POST LD 22 Excerpt, Exhibit R to the Baker Decl., at 1. Hall’s decision was
 25 consistent with this training as it involved making a plan and identifying the position of cover he
 26 wished to take, which was on his passenger’s side. Ex. D at 84:12-15.

27
 28 ¹² *See* Amended Responses to Special Interrogatories, Set One, to Plaintiff Jeannie Atienza,
 Response Interrogatory No. 4 at 6, Exhibit O to the Baker Decl.

Further, Hall's plan was consistent with his duties as a cover officer under POST. As the cover officer, Hall was responsible for observing Arboleda. POST LD 21 Excerpt, Exhibit S to the Baker Decl., at 2 (cover officer "responsible for surveillance and control of a suspect"). Hall specifically had to be able to observe Arboleda's hands; as POST states emphatically - "*Always* be aware of the suspect's hands." *Id.* at 8 (bold and italics in original). On the passenger side of his vehicle, Hall would be in a better position to observe Arboleda, including his hands, and to approach Arboleda, if he remained stopped. Ex. D at 76:5-7, 78:24-79:8. Hall's plan had the further benefit of establishing a perimeter to contain Arboleda. *See id.* (Hall's presence on the passenger side might deter Arboleda from continuing to flee).

Plaintiff's expert Roger Clark agreed that Hall's plan would have been "fine" if Hall "had not shot and he let the vehicle pass by and got back in his car and went after him."¹³ Ex. Q at 41:8-12. Clark's caveat has no merit; it ignores both the threat that Arboleda's Civic posed to Hall¹⁴ and Hall's "back-up plan," which was to let Arboleda pass without shooting. Ex. D at 80:17-21.

Hall's plan of going to his passenger side door was not only reasonable, but did not, in any manner, "provoke" Arboleda into driving his Civic at Hall. *Compare Grudt v. City of Los Angeles*, 2 Cal. 3d 575, 585-88 (1970) (officer in plain clothes carrying a shotgun approached a car, causing the car to accelerate towards a second plainclothes officer). When Hall made his plan and started to effectuate it, Martin had not yet parked in the southbound lane, thus, Arboleda had the whole southbound lane available to him and no reason to drive at Hall. Even after Martin had parked, Arboleda did not have to drive into the gap and towards Hall; Arboleda could have stopped or proceeded straight and passed Martin's vehicle on the passenger side. Given Arboleda's decision and role in causing the shooting, "a reasonable juror could not find" Hall was negligent. *J.A.L.*, 724 Fed. Appx. at 534 (suspect responded to use of non-lethal force by running towards officer with blade,

¹³ Later in his deposition, Clark opined that Hall could not use either the driver's side door nor the passenger's side door as cover due to the risk that Arboleda would simply smash into the doors and, thus, Hall's "best choice" was "to get to the rear of [his] vehicle so [he had] the mass of the vehicle as cover." Ex. Q at 89:12-24. This proposed plan makes no sense and violated POST training because in that sheltered position, Hall would not be able to observe Arboleda or his hands, or perform any other duties of a cover officer, i.e. protect and assist Muller.

¹⁴ Disregarding the video evidence, Clark testified that Hall's fear of being hit by Arboleda's Civic was "unreasonable." Ex. Q at 61:10-15. That opinion should be excluded.

1 “immediately creating a life-threatening situation”).

2 **b. Even if Hall Was Negligent, His Conduct Did Not Proximately**
 3 **Cause Arboleda’s Death**

4 Atienza also must establish that Hall’s negligence was the proximate cause of Arboleda’s
 5 death. She cannot because 1) the shooting was not foreseeable at the time of Hall’s alleged negligence
 6 and 2) Martin’s and Arboleda’s conduct were superceding causes, breaking the causal chain. This is
 7 an independent basis to grant summary judgment on this claim.

8 Atienza must show that Hall’s conduct was the proximate cause of the injury. *Van Ort v.*
 9 *Estate of Stanewich*, 92 F.3d 831, 837 (9th Cir. 1996). The “touchstone of proximate cause” is
 10 foreseeability. *Sabbe v. Wash. Cty. Bd. of Commissioners*, 2021 U.S. Dist. LEXIS 87901, *33 (D. Ore.
 11 May 7, 2021); *see also Bryant v. Glastetter*, 32 Cal. App. 4th 770, 778 (1995). When Hall decided to
 12 position himself on his passenger side, it was not foreseeable, and could not be foreseen, that Arboleda
 13 would drive into down the then-non-existent gap and force Hall to shoot in self-defense. To be sure,
 14 Plaintiff’s expert Clark testified that, prior to the shooting, Hall should have considered Arboleda to be
 15 a low risk. Ex. Q at 34:8-12. As the D.C. Circuit aptly noted, “it is not ordinarily reasonable to
 16 foresee that a citizen will react to a police stop by attacking the detaining officer, thereby triggering a
 17 situation that requires the officer to use deadly force in self-defense. To the contrary, citizens have a
 18 duty to obey a police officer’s orders, and officers are entitled assume that citizens will comply with
 19 their orders.” *Hundley v. District of Columbia*, 494 F.3d 1097, 1105 (D.C. Cir. 2007). Likewise, in
 20 *Sabbe, supra*, the Court held that it was “not reasonably foreseeable from [an illegal] entry alone that
 21 Sabbe would then decide to ram the officers with his truck” and that “it was not reasonable foreceable
 22 that even after repeated attempts to seize Sabbe through a PIT maneuver he would continue to resist
 23 law enforcement efforts and threaten the officers with a firearm.” 2021 U.S. Dist. LEXIS 87901, *34.

24 In addition, Hall’s conduct is not the proximate cause if an “an abnormal or unforeseen action .
 25 . . intervenes to break the chain of proximate causality.” *Estate of Lopez v. Torres*, 105 F. Supp. 3d
 26 1148, 1158 (S.D. Cal. 2015) (citing *Van Ort*). Intervening causes can include conduct of other
 27 officers, like Martin, as well as the “the behavior of a shooting victim.” *Id.* at 1156-57 (actions of
 28 SWAT unit were intervening event); *Mendez v. Cty. of L.A.*, 897 F.3d 1067, 1081 (9th Cir. 2018);.
 Here, there are two superceding causes at work.

1 The first superceding cause was Martin parking his SUV exactly where he did. The location of
 2 the SUV was critical. Had the SUV been further forward, Arboleda could not have made the hard
 3 right turn. Had it been further back, Arboleda might have elected to proceed forward to pass the
 4 SUV on its passenger side. And had it been closer to Hall's vehicle, the gap would have been too
 5 narrow for Arboleda to drive through. *See* Ex. C at 40:10-11 (patrol vehicle unable to "get through the
 6 space"). And significantly, Martin did not intend to park the SUV where he did, but parked there to
 7 avoid colliding with Arboleda. Martin Decl., ¶4.

8 Further to the point, without the SUV in the southbound lane, Arboleda could have passed Hall
 9 without driving towards him and Hall, consistent with his "backup" plan, would not have fired.
 10 Conversely, had Arboleda driven at Hall despite having the whole southbound lane, Arboleda's actions
 11 would be a superceding cause of the shooting. *Mendez*, 897 F.3d at 1097 ("If a resident sees that an
 12 officer has entered and intentionally tries to harm the officer, who in turn draws his weapon and
 13 shoots, the resident's intentional action would be a superseding cause of the injury." Citing *Bodine v.*
 14 *Warwick*, 72 F.3d 393, 400 (3d Cir. 1995)); *see also* *Hundley*, 494 F.3d at 1105; *Johnson v. City of*
 15 *Phila.*, 837 F.3d 343, 352 (3d Cir. 2016); *Kane v. Lewis*, 604 Fed. Appx. 229, 237 (4th Cir. 2015).

16 The second superceding cause was Arboleda's hard right turn and continuing to drive forward.
 17 Arboleda could have stopped or gone straight instead of making the hard right turn. Notably, at that
 18 time, Arboleda should have known that Hall was headed towards that same gap. And Arboleda could
 19 have (should have) stopped when he saw Hall in front of the Civic with his weapon drawn and pointed,
 20 but he didn't. Arboleda's conduct was a superceding cause. *Mendez*, 897 F.3d at 1097.

21 In sum, Hall's conduct was not the proximate cause of Arboleda's death.

22 **3. There Was No Violation of the Bane Act**

23 Atienza's Bane Act claim is predicated upon the assertion that Hall violated Arboleda's Fourth
 24 Amendment rights. *See Cameron v. Craig*, 713 F.3d 1012, 1022 (9th Cir. 2013). Consequently, as
 25 there was no Fourth Amendment violation, her Bane Act claim necessarily fails. *Estate of Toribio*,
 26 381 F. Supp. 2d at 1191. Further, even assuming that Hall violated Arboleda's Fourth Amendment
 27 rights, there is no evidence that he did so with the intent to deprive Arboleda of these rights. *Reese v.*
 28 *Cty. of Sacramento*, 888 F.3d 1030, 1043 (9th Cir. 2018); *Estate of Toribio*, 381 F. Supp. 3d. at 1191.

1 To the contrary, Hall fired in self-defense and in defense of others. Ex. N at 6:229-244.

2 **4. There Was No Assault**

3 To show assault under California law, Atienza must show that Hall's use of force was
4 unreasonable. *Juricich, supra*, 2021 U.S. Dist. LEXIS 18764, *39. This claim fails in light of
5 Atienza's inability to establish a Fourth Amendment violation. *Id.*

6 **F. The Court Should Grant Summary Judgment as to Two Damage Claims**

7 The Court should grant summary judgment as Atienza's claim for wrongful death damages and
8 her claim for punitive damages.

9 Atienza cannot wrongful death damages because she cannot prove wrongful conduct by Hall
10 caused Arboleda's death. Here there was only one fatal shot, but Atienza cannot establish which shot
11 was the fatal one. Ex. M at 11:1-7, 35:9-23. Since at least some of Hall's shots were reasonable as a
12 matter of law, Atienza cannot meet her burden of proof.

13 Atienza cannot obtain punitive damages because Hall's actions were not malicious, oppressive,
14 or in reckless disregard of Arboleda's rights. *Dang v. Cross*, 422 F.3d 800, 810 (9th Cir. 2005); Ninth
15 Circuit Model Jury Instruction 5.5 (2008). To the contrary, he acted in self defense and in defense of
16 Martin. *See* Ex. N at 6:229-244.

17 **VI. CONCLUSION**

18 Based on the undisputed evidence, the Court should grant summary judgment in favor of Hall
19 as to all five claims in this case. Given the threat that Arboleda posed to Hall and others, Hall's
20 conduct was appropriate under the Fourth and Fourteenth Amendments and immunized by the state
21 law immunities set out in California Penal Code sections 196 and 835a. In addition, in light of
22 Arboleda's conduct, the fluidity of the situation and the time Hall had to respond, Hall's conduct was
23 not negligent, did not violate the Bane Act or constitute assault, and did not proximately cause
24 Arboleda's death. Further, for the same reasons, Atienza's claim for punitive damages has no merit.

25 //

26 //

27 //

28 //

1 DATED: June 2, 2021

MARY ANN McNETT MASON
COUNTY COUNSEL

2
3
4 By: /s/ D. Cameron Baker
D. CAMERON BAKER
5 Deputy County Counsel

6 Attorneys for Defendant Andrew Hall
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28